

Service Date: April 5, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Burlington Northern Railroad)	
Company to discontinue its agency)	DOCKET NO. T-9183
and dispose of the depot facility)	
at Wibaux, Montana.)	ORDER NO. 5836

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles A. Dearden, Burlington Northern Railroad Company, 1201
Norwest Center, 175 North 27th Street, Billings, Montana 59101

FOR THE COMMISSION:

Geralyn Driscoll, Staff Attorney, 2701 Prospect Avenue,
Helena, Montana 59620

BEFORE:

Danny Oberg, Commissioner and Hearing Examiner

BACKGROUND

Burlington Northern Railroad Company (BN) applied to the

Montana Public Service Commission (Commission) on January 25, 1988, for authority to discontinue its agency and dispose of the depot facility at Wibaux, Montana.

The Commission noticed BN's application and a public hearing was held on March 10, 1988, at the Wibaux County Courthouse, Wibaux, Montana.

At the conclusion of the hearing the parties stipulated to a final order.

SUMMARY OF TESTIMONY

Testimony of Applicant

Testifying for BN were Gary Gertie, John Miskulin and William Allbright.

Gary Gertie. Mr. Gertie is the regional manager for station services in the Denver region. He explained that under BN's proposal, a shipper wanting service out of Wibaux would contact the Centralized Billing Center (CBC) in Glendive to order a railroad car. The customer would inform the CBC what was being sent, where it was being sent and when. The CBC will order from a BN car distributor who will send it to the customer's loading facility. BN will pick up the car when it is loaded.

The CBC operates 24 hours a day, 7 days a week. It is a computerized operation that ties into the entire BN system. The customer prepares a bill of lading. The customer can call the CBC toll free. There are three options for processing the bill of

lading. The customer can mail the bill of lading to Glendive for signature, or use power of attorney for BN to sign the bill of lading for BN, or put the bill of lading into a locked box at the point of pickup.

A way bill is an internal document that tells the railroad where the car is going. The CBC is equipped to handle both the bill of ladings and way bills.

Mr. Gertie testified that he talked to shippers in the Wibaux area. No one he spoke to objects to the agency closing.

The agent is a protected employee with seniority who would be able to bump a junior employee.

John Miskulin. Mr. Miskulin is the train master and agent stationed in Glendive. His responsibility is to supervise clerical work at Glendive and supervisor the agencies throughout the area. He is also responsible for train service in the area.

He testified that Wibaux currently has no scheduled train service, trains run on an as needed basis to Wibaux.

William Allbright. Mr. Allbright, a senior cost analyst for BN, sponsored Exhibit A -- Accounting Exhibits for Proposal to Discontinue Agency Service at Wibaux, Montana. Exhibit A shows the following cars received and forwarded at Wibaux in 1984, 1985, 1986 and 1987.

Cars Received and Forwarded at Wibaux

	1984	1985	1986	Jan-Sept. 1987
Received	0	1	1	0
Forwarded	0	0	0	1
Total	0	1	1	1

Exhibit A also contained net revenues or losses for the Wibaux agency calculated using the Belt/Carter and the BN formulas.

	Belt Carter Formula	BN Formula
1984	\$ -0-	\$(41,902)
1985	543	(42,196)
1986	479	(40,397)
1987	289	(33,447)

Page 3 of Exhibit A showed number of units handled and estimated amount of time consumed performing agency work at the station at Wibaux, Montana during 1987. This schedule showed a total time worked of 2,000 hours and a total time required for agency work of 252 hours. Based on BN's estimation of the time required to do a unit of agency work and the actual number of units of work handled, the agent at Wibaux spent 13 percent of his time on agency work and 87 percent of his time was available for other work.

On cross-examination Mr. Allbright testified that to date in 1988 approximately 20 cars have been forwarded from Wibaux.

Testimony of Public Witnesses

Mr. James Mular, legislative director of the Transportation Communications Union (TCU) testified in opposition to the closure of the Wibaux agency. He testified that he believes that public convenience and necessity require the Wibaux agency to remain open. Using the Carter/Belt formula, the agency is profitable. The lack of shipper testimony does not prove that public convenience and necessity do not require the Wibaux agency in his opinion. The railroad has introduced no evidence to show that the Glendive agency is capable of handling the increased work from Wibaux and has produced no evidence that the Glendive CBC can adequately meet shipper needs.

Mr. Mular also testified that there will be no cost saving to the railroad for closing the Wibaux agency because the agent is a protected employee. He also disputed the productivity figures of BN arguing that the numbers do not adequately reflect the agent's contribution to service.

Mr. Mular requested the Commission to give employee wage protection under 69-14-101, MCA. He testified that the Idaho Public Utilities Commission provided such protection in a 1981 order. He also testified as to his discussions with BN personnel during the 1987 legislature regarding the amendment of 69-14-202, MCA, and its subsequent application. Mr. Mular testified that BN indicated it would not seek the closure of any station where the

agent was within two years of retirement. This policy would avoid both the bumping of junior employees and the upheaval of the agent's life. Mr. Mular testified that in return for this promise the TCU and other unions did not oppose the amendment of 69-14-202, MCA.

Public testimony was also received from Francis Efta and Pat Mitchell.

Francis Efta testified that he has safety concerns regarding the closure of the agency. There have been numerous accidents on the bridge across Beaver Creek and it is his opinion that an agent at Wibaux might be required for safety reasons.

Pat Mitchell testified in opposition to the closure. Mr. Mitchell is a BN brakeman. He testified that 500,000 cars pass through Wibaux in a year. He believes that it is the railroad's intention to reduce the existing 42 agencies to 2 or 3. It is Mr. Mitchell's belief that BN would prefer to have a run through train from Minneapolis to Seattle that makes no stops in Montana. He believes that BN is not interested in providing train service in Montana and is eager to rid itself of agency and service requirements in places such as Wibaux. He believes that BN no longer wants to maintain the smaller agencies because small agencies encourage a demand for rural business that BN does not want to meet. Having an agent in Wibaux provides rural service and BN would like to get out of rural service.

DISCUSSION, ANALYSIS AND FINDINGS

Under ♣ 69-14-202(2), MCA, as amended by the 1987 legislature, the Commission shall authorize the closure, consolidation or centralization of a facility if a railroad demonstrates to the Commission that the facility is not required for public convenience and necessity. Public convenience and necessity is not an absolute standard that can be determined by formula. It must be determined by the facts and circumstances of each case. The Commission must weigh the needs of shippers for rail service and the concerns of the communities served by the railroad against the railroad company's burden of maintaining agency service.

The Commission finds that Wibaux received 0 shipments in 1984, 1 shipment in 1985, 1 shipment in 1986 and 0 shipments in 1987. The agency forwarded 0 shipments in 1984, 0 shipments in 1985, 0 shipments in 1986 and 1 shipment in 1987. No shippers or receivers of freight appeared to testify in opposition to the application. Two Wibaux citizens testified in opposition to the closure of the agency.

Based on the low volume of cars received or forwarded at Wibaux, the absence of shipper testimony, and BN's testimony that the Glendive Centralized Billing Center is willing and able to provide all necessary services, the Commission finds that public convenience and necessity does not require that the Wibaux agency

remain open.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

3. No rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953) cert. den. 346 U.S. 823.

The Commission concludes that the public convenience and necessity do not require the continuance of an agency at Wibaux, Montana.

4. The Commission concludes that Burlington Northern Railroad Company may remove the Wibaux depot. Prior to its disposal, BN should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building. The Commission directs Burlington Northern Railroad Company to inform the Commission in writing of the disposition of

the building.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9183 to close the agency at Wibaux, Montana and dispose of the depot facility is granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

DONE AND DATED this 1st day of April, 1988 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Carol Frasier
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.